

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

HyperCube LLC and KMC Data LLC)	
)	
Plaintiffs,)	
)	C. A. No. 07-822-GMS
v.)	
)	
Qwest Communications Corporation)	
)	
Defendant.)	
)	

**DEFENDANT'S MOTION DISMISS
COUNTS II, III, IV, AND V OF THE COMPLAINT**

Defendant Qwest Communications Corporation, by and through its undersigned counsel, hereby moves pursuant to Federal Rule of Civil Procedure 12(b)(6) for an order dismissing Counts II, III, IV and V of Plaintiffs' Complaint with prejudice. The grounds for this motion are fully set forth in Defendant's Opening Brief in Support of Its Motion to Dismiss Counts II, III, IV and V of the Complaint, filed contemporaneously herewith. Along with the instant Motion, Qwest is simultaneously filing a Motion to Stay this Proceeding Pending Resolution of a Parallel State Court Proceeding and a Motion to Transfer This Proceeding to the District of Colorado Pursuant to 28 U.S.C. §1404. Qwest respectfully requests that the Court decide the Motion to Transfer this case to Colorado before deciding this Motion or the Motion to Stay.

Of Counsel:

Timothy R. Beyer

Amy L. Benson

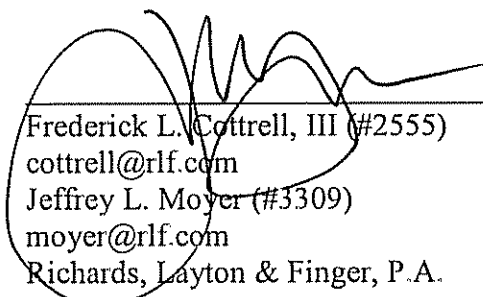
Lauren E. Schmidt

Brownstein Hyatt Farber Schreck, P.C.

410 Seventeenth Street, 22nd Floor

Denver, CO 80202-4437

Telephone: 303-223-1100



Frederick L. Cottrell, III (#2555)

cottrell@rlf.com

Jeffrey L. Moyer (#3309)

moyer@rlf.com

Richards, Layton & Finger, P.A.

One Rodney Square

920 North King Street

Wilmington, DE 19801

302-651-7700

Attorneys for Defendant

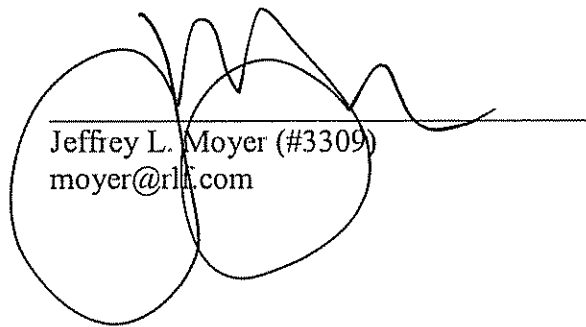
Qwest Communications Corporation

Dated: January 22, 2008

CERTIFICATE OF SERVICE

I hereby certify that on January 22, 2008, I caused to be served by hand delivery the foregoing document and electronically filed the same with the Clerk of Court using CM/ECF which will send notification of such filing(s) to the following:

Richard L. Horwitz
Potter Anderson & Corroon, LLP
1313 N. Market Street
Hercules Plaza, 6th Floor
P. O. Box 951
Wilmington, DE 19899-0951



Jeffrey L. Moyer (#3309)
moyer@rlf.com

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

HyperCube LLC and KMC Data LLC)	
)	
Plaintiffs,)	
)	C. A. No. 07-822-GMS
v.)	
)	
Qwest Communications Corporation)	
)	
Defendant.)	
)	

**[PROPOSED] ORDER GRANTING DEFENDANT'S MOTION TO
DISMISS COUNTS II, III, IV AND V OF THE COMPLAINT**

AND NOW, upon consideration of Defendant's Motion to Dismiss Counts II, III, IV and V of the Complaint, and all briefs submitted in support thereof and in opposition thereto,

IT IS HEREBY ORDERED this ____ day of _____, 2008, that Defendant's Motion is GRANTED, and Counts II, III, IV and V of the Complaint are DISMISSED WITH PREJUDICE.

United States District Judge